

**ENTERED**

November 23, 2022

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

ROBERTO ROSALES, JR.,

Petitioner,

VS.

UNITED STATES OF AMERICA

§  
§  
§  
§  
§  
§CIVIL ACTION NO. 1:21-CV-124  
CRIMINAL ACTION NO. 1:18-CR-621-1

Respondent.

**ORDER**

On August 16, 2021, Petitioner Roberto Rosales, Jr. moved to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. (Doc. 1) Rosales alleges that he received ineffective assistance of counsel, and that the district court erred by applying certain enhancements under the United States Sentencing Guidelines when determining the sentencing guideline range. (*Id.* at 5–9)

In May 2022, the Magistrate Judge held an evidentiary hearing on Rosales’s ineffective assistance of counsel claim, and subsequently ordered additional post-hearing briefing and argument on the motion. (*See* Order, Doc. 26; Order, Doc. 29) The Magistrate Judge then issued a Report and Recommendation, recommending that Rosales’s Motion be denied as substantively meritless. (R&R, Doc. 38)

No party filed objections to the Report and Recommendation, and the Court finds no plain error within it. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b)(3).

As a result, the Court **ADOPTS** the Report and Recommendation (Doc. 38). It is:

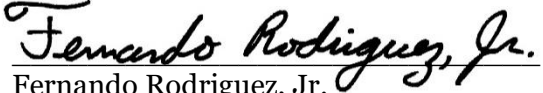
**ORDERED** that Petitioner Roberto Rosales, Jr.’s Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Doc. 1) is **DENIED** as meritless.

In addition, the Court finds that no outstanding issue would be debatable among jurists of reason, and that Rosales fails to make a “substantial showing of the denial of a constitutional

right.” 28 U.S.C. § 2253(c)(2). Accordingly, the Court **DENIES** a Certificate of Appealability.

The Clerk of Court is directed to close this matter.

Signed on November 23, 2022.

  
Fernando Rodriguez, Jr.  
United States District Judge